

KANSAS JUVENILE JUSTICE CODE

SECTION 5

CHAPTER 38—MINORS ARTICLE 23—REVISED KANSAS JUVENILE JUSTICE CODE

38-2352. Time of hearing. All cases filed under the code shall be heard without unnecessary delay. Continuances may be granted to either party for good cause shown.

History: L. 2006, ch. 169, § 52; Jan. 1, 2007.

Source or Prior Law:
38-1651.

38-2353. Hearings; open to the public; restrictions. (a) All hearings shall be open to the public, unless the judge determines that opening the hearing to the public is not in the best interests of the victim or of any juvenile who at the time of the alleged offense was less than 16 years of age.

(b) If the court determines that opening the court proceedings to the public is not in the best interest of the juvenile, the court may exclude all persons except the juvenile, the juvenile's parents, attorneys for parties, officers of the court, the witness testifying and the victim, as defined in subsection (b) of K.S.A. 74-7333, and amendments thereto, or such members of the victim's family, as defined in subsection (c)(2) of K.S.A. 74-7335, and amendments thereto, as the court deems appropriate. Upon agreement of all parties, the court shall allow other persons to attend the hearing unless the court finds the presence of the persons would be disruptive to the proceedings.

(c) As used in this section, "hearings" shall include detention, first appearance, adjudicatory, sentencing and all other hearings held under this code. Nothing in this section shall limit the judge's authority to sequester witnesses.

History: L. 2006, ch. 169, § 53; Jan. 1, 2007.

Source or Prior Law:
38-1652.

38-2354. Rules of evidence. In all hearings pursuant to the code, the rules of evidence of the code of civil procedure shall apply. The presiding judge shall not consider, read or rely upon any report not properly admitted according to the rules of evidence.

History: L. 2006, ch. 169, § 54; Jan. 1, 2007.

Source or Prior Law:
38-1653.

38-2355. Degree of proof. In all proceedings on complaints pursuant to the code the state must prove beyond a reasonable doubt that the juvenile committed the act or acts charged in the complaint or a lesser included offense as defined in subsection (2) of K.S.A. 21-3107, and amendments thereto.

History: L. 2006, ch. 169, § 55; Jan. 1, 2007.

Source or Prior Law:
38-1654.

38-2356. Adjudication. (a) If the court finds that the evidence fails to prove an offense charged or a lesser included offense as defined in subsection (2) of K.S.A. 21-3107, and amendments thereto, the court shall enter an order dismissing the charge.

(b) If the court finds that the juvenile committed the offense charged or a lesser included offense as defined in subsection (2) of K.S.A. 21-3107, and amendments thereto, the court shall adjudicate the juvenile to be a juvenile offender and may issue a sentence as authorized by this code.

(c) If the court finds that the juvenile committed the acts constituting the offense charged or a lesser included offense as defined in subsection (2) of K.S.A. 21-3107, and amendments thereto, but is not responsible because of mental disease or defect, the juvenile shall not be adjudicated as a juvenile offender and shall be committed to the custody of the secretary of social and rehabilitation services and placed in a state hospital. The juvenile's continued commitment shall be subject to annual review in the manner provided by K.S.A. 22-3428a, and amendments thereto, for review of commitment of a defendant suffering from mental disease or defect, and the juvenile may be discharged or conditionally released pursuant to that section. The juvenile also may be discharged or conditionally released in the same manner and subject to the same procedures as provided by K.S.A. 22-3428, and amendments thereto, for discharge of or granting conditional release to a defendant found suffering from mental disease or defect. If the juvenile violates any conditions of an order of conditional release, the juvenile shall be subject to contempt proceedings and returned to custody as provided by K.S.A. 22-3428b, and amendments thereto.

(d) A copy of the court's order shall be sent to the school district in which the juvenile offender is enrolled or will be enrolled.

History: L. 2006, ch. 169, § 56; Jan. 1, 2007.

Source or Prior Law:
38-1655.

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38-2357. Jury trials in certain cases. In all cases involving offenses committed by a juvenile which, if done by an adult, would make the person liable to be arrested and prosecuted for the commission of a felony, the judge may upon motion, order that the juvenile be afforded a trial by jury. Upon the juvenile being adjudged to be a juvenile offender, the court shall proceed with sentencing.

History: L. 2006, ch. 169, § 57; Jan. 1, 2007.

Source or Prior Law:

38-1656.

38-2358. Recorded statement of child victim admissible in certain cases; limitations. (a) In any proceeding pursuant to the code in which a child less than 13 years of age is alleged to be a victim of the offense, a recording of an oral statement of the child, made before the proceeding began, is admissible in evidence if:

(1) The court determines that the time, content and circumstances of the statement provide sufficient indicia of reliability;

(2) no attorney for any party is present when the statement is made;

(3) the recording is both visual and aural and is recorded on film or videotape or by other electronic means;

(4) the recording equipment is capable of making an accurate recording, the operator of the equipment is competent and the recording is accurate and has not been altered;

(5) the statement is not made in response to questioning calculated to lead the child to make a particular statement or is clearly shown to be the child's statement and not made solely as a result of a leading or suggestive question;

(6) every voice on the recording is identified;

(7) the person conducting the interview of the child in the recording is present at the proceeding and is available to testify or be cross-examined by any party;

(8) each party to the proceeding is afforded an opportunity to view the recording before it is offered into evidence, and a copy of a written transcript is provided to the parties; and

(9) the child is available to testify.

(b) If a recording is admitted in evidence under this section, any party to the proceeding may call the child to testify and be cross-examined, either in the courtroom or as provided by K.S.A. 2006 Supp. 38-2359, and amendments thereto.

History: L. 2006, ch. 169, § 58; Jan. 1, 2007.

Source or Prior Law:

38-1657.

38-2359. Record by electronic means of testimony of child victim admissible in certain cases, limitations; objections; restrictions. (a) On motion of the attorney for any party to a proceeding pursuant to the Kansas juvenile offenders code in which a child less than 13 years of age is alleged to be a victim of the offense, the court may order that the testimony of the child be taken:

(1) In a room other than the courtroom and be televised by closed-circuit equipment in the courtroom to be viewed by the court and the finder of fact in the proceeding; or

(2) outside the courtroom and be recorded for showing in the courtroom before the court and the finder of fact in the proceeding if: (A) The recording is both visual and aural and is recorded on film or videotape or by other electronic means; (B) the recording equipment is capable of making an accurate recording, the operator of the equipment is competent and the recording is accurate and has not been altered; (C) every voice on the recording is identified; and (D) each party to the proceeding is afforded an opportunity to view the recording before it is shown in the courtroom, and a copy of a written transcript is provided to the parties. The state must establish by clear and convincing evidence that to require the child who is the alleged victim to testify in open court will so traumatize the child as to prevent the child from reasonably communicating to the jury or render the child unavailable to testify. The court shall make such an individualized finding before the state is permitted to proceed under this section.

(b) At the taking of testimony under this section:

(1) Only the attorneys for the juvenile, the state and the child; any person whose presence would contribute to the welfare and well-being of the child; and persons necessary to operate the recording or closed-circuit equipment may be present in the room with the child during the child's testimony;

(2) only the attorneys may question the child;

(3) the persons operating the recording or closed-circuit equipment shall be confined to an adjacent room or behind a screen or mirror that permits them to see and hear the child during the child's testimony but does not permit the child to see or hear them; and

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(4) the court shall permit the juvenile to observe and hear the testimony of the child in person, but shall ensure that the child cannot hear or see the juvenile.

(c) If the testimony of a child is taken as provided by this section, the child shall not be compelled to testify in court during the proceeding.

(d) (1) Any objection by any party to the proceeding that the recording under subsection (a)(2) is inadmissible must be made by written motion filed with the court at least seven days before the commencement of the proceeding. An objection under this subsection shall specify the portion of the recording which is objectionable and the reasons for the objection. Failure to file an objection within the time provided by this subsection shall constitute waiver of the right to object to the admissibility of the recording unless the court, in its discretion, determines otherwise.

(2) The provisions of this subsection shall not apply to any objection to admissibility for the reason that the recording has been materially altered.

History: L. 2006, ch. 169, § 59; Jan. 1, 2007.

Source or Prior Law:
38-1658.

38-2360. Post adjudication orders and hearings. (a) At any time after the juvenile has been adjudicated to be a juvenile offender, the court shall order one or more of the tools described in this subsection to be submitted to assist the court unless the court finds that adequate and current information is available from a previous investigation, report or other sources:

(1) An evaluation and written report by a mental health or a qualified professional stating the psychological or emotional development or needs of the juvenile. The court also may order a report from any mental health or qualified professional who has previously evaluated the juvenile stating the psychological or emotional development needs of the juvenile. If the court orders an evaluation as provided in this section, a parent of the juvenile shall have the right to obtain an independent evaluation at the expense of the parent.

(2) A report of the medical condition and needs of the juvenile. The court also may order a report from any physician who has been attending the juvenile, stating the diagnosis, condition and treatment afforded the juvenile.

(3) An educational needs assessment of the juvenile from the chief administrative officer of the school which the juvenile attends or attended to provide to the court information that is readily available which the school officials feel would properly indicate the educational needs of the juvenile. The educational needs assessment may include a meeting involving any of the following: (A) The juvenile's parents; (B) the juvenile's teacher or teachers; (C) the school psychologist; (D) a school special services representative; (E) a representative of the commissioner; (F) the juvenile's court appointed special advocate; (G) the juvenile's foster parents or legal guardian; and (H) other persons that the chief administrative officer of the school, or the officer's designee, deems appropriate.

(4) Any other presentence investigation and report from a court services officer which includes: (A) The circumstances of the offense; (B) the attitude of the complainant, victim or the victim's family; (C) the record of juvenile offenses; (D) the social history of the juvenile; and (E) the present condition of the juvenile. Except where specifically prohibited by law, all local governmental public and private educational institutions and state agencies shall furnish to the officer conducting the predispositional investigation the records the officer requests. Predispositional investigations shall contain other information prescribed by the court.

(5) The court in its discretion may direct that the parents submit a domestic relations affidavit.

(b) Expenses for post adjudication tools may be waived or assessed pursuant to subsection (c)(2) of K.S.A. 2006 Supp. 38-2314, and amendments thereto.

(c) The court shall make any of the reports ordered pursuant to subsection (a) available to the attorneys and shall allow the attorneys a reasonable time to review the report before ordering the sentencing of the juvenile offender.

(d) At any time prior to sentencing, the judge, at the request of a party, shall hear additional evidence as to proposals for reasonable and appropriate sentencing of the case.

History: L. 2006, ch. 169, § 60; Jan. 1, 2007.

Source or Prior Law:
38-1661, 38-1662.